



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

RQ 667

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October 9, 1974

Commissioner Jackie W. St. Clair
Texas Department of Labor and Standards
Box 12157, Capitol Station
Austin, Texas 78711

Open Records Decision No. 50
Re: Availability of data used
in testing mobile home tie-downs.

Dear Commissioner St. Clair:

Pursuant to § 7(a) of the Open Records Act, Art. 6252-17a, V. T. C. S., you ask whether certain information in possession of the Mobile Home Division (Division) of the Texas Department of Labor and Standards regarding mobile home tie-down anchors must be disclosed to the public. The Performance Certification Board is required to establish minimum safety standards which must be met by the manufacturers of mobile home anchors and to adopt rules for the enforcement of these standards. Art. 5221f, § 14, V. T. C. S. The Mobile Homes Division is charged with enforcing the rules adopted by the Board and, in executing its duties, it requires manufacturers of mobile home anchors to test their product and to submit the tests along with accompanying information for approval.

The Mobile Homes Division has been requested to make available information regarding mobile home tie-down anchors which may be broken down into the following general categories: (1) copies of all tests of mobile home tie-down anchors and the results of the tests; (2) all data and installation instructions which have been submitted with the tests; and (3) copies of all engineering drawings.

Subject to certain exceptions, the Open Records Act makes available to the public all information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business. An exception is made for "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Art. 6252-17a, § 3(a)(10),

V. T. C. S. You have refused to release the requested information on the ground that it consists of trade secrets.

Texas has adopted the definition of "trade secret" contained in the Restatement of Torts, § 757(b), (1939):

A trade secret may consist of any . . . device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be . . . a pattern for a machine or other device

Hyde Corporation v. Huffines, 314 S. W. 2d 763, 776 (Tex. 1958); Elcor Chemical Corporation v. Argi-Sul, Inc., 494 S. W. 2d 204, 211 (Tex. Civ. App. --Dallas 1973, writ ref'd. n. r. e.). "[A trade secret] may be a device or process . . . which is merely a mechanical improvement that a good mechanic can make." K & G Oil Tool & Service v. G. & G. Fishing Tool Service, 314 S. W. 2d 782, 789 (Tex. 1958). A process or device may be a trade secret even though others could have gained knowledge of it from a study of either the marketed product, Ventura Manufacturing Company v. Locke, 454 S. W. 2d 431 (Tex. Civ. App. --San Antonio 1970, no writ), or articles and trade magazines, Elcor Chemical Corporation v. Agri-Sul, Inc., supra.

Engineering drawings, if they have been kept confidential by the manufacturers using them, would clearly qualify as trade secrets under the foregoing authorities. They are similar to a pattern for a machine; they contain the most intimate details about a manufacturer's product and the process by which it is made. Therefore it is our opinion that the engineering drawings submitted by the manufacturers to the Division are excepted by § 3(a)(10) from the mandatory disclosure requirement of the Open Records Act.

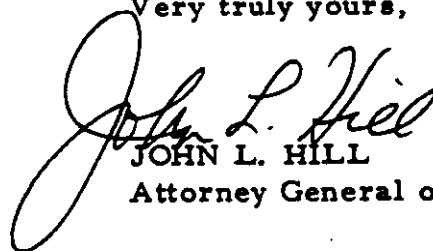
Copies of tests conducted on mobile home anchors and test results, on the other hand, do not in our opinion qualify as trade secrets. The purpose of the Open Records Act is to enable the public to obtain information as to the manner in which governmental bodies perform the duties that have been

delegated to them. Art. 6252-17a, §1. In carrying out its duty to enforce the minimum safety standards for mobile home anchors set by the Performance Certification Board, the Mobile Homes Division requires manufacturers to have their products tested and to submit the tests and results to the Division for approval. If the Division conducted the tests itself, it would be inconsistent with the purpose of the Open Records Act to hold that the tests and results are excepted from disclosure as trade secrets, because then the public would be precluded from learning how the Division was executing its duties. A different conclusion should not result simply because the Division permits manufacturers to have the tests conducted by independent contractors.

In short, copies of tests and test results are information compiled by the Division itself in executing its enforcement responsibilities and are not trade secrets of the various manufacturers tested. See Open Records Decision No. 48 (1974) and cases cited therein. Therefore they are not excepted by § 3(a)(10) from disclosure under the Open Records Act and should be made available to the public upon request.

As for other data which is submitted by manufacturers to the Division along with the required tests, any of it which meets the definition of trade secret set out above is excepted by § 3(a)(10) from the mandatory disclosure requirements of the Open Records Act. Of course an entire document is not excepted from disclosure because in it are contained some trade secrets. The purposes of the exception are adequately served if only that portion of the document which contains the confidential material and any identifying details elsewhere are deleted before the remainder is released to the public. Soucie v. David, 448 F.2d 1067 (D. C. Cir. 1971) and Grumman Aircraft Engineering Corporation v. Renegotiation Board, 425 F.2d 578 (D. C. Cir. 1970).

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "John L. Hill". The signature is written over the printed name and title.

JOHN L. HILL

Attorney General of Texas

APPROVED:



C.J. CARL, Staff Legislative Assistant



DAVID M. KENDALL, Chairman
Opinion Committee

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